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10/699,824	11/04/2003	Ralph S. Hoefelmeyer	COS-02-008	4440

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EXAMINER	
AVELLINO, JOSEPH E	

ART UNIT	PAPER NUMBER
2146	

NOTIFICATION DATE	DELIVERY MODE
06/09/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/699,824	HOEFELMEYER ET AL.	
	Examiner	Art Unit	
	Joseph E. Avellino	2146	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 April 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3-16 and 18-31* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,3-16 and 18-31* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *04 November 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1, 3--16 and 18-31 are presented for examination; claims 1, 12, 24, and 31 independent. The Office acknowledges the cancellation of claims 2 and 17.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3-16 and 18-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Multerer et al. (US 2004/00002384) (hereinafter Multerer) in view of Ko et al. (US 2002/0013882) (hereinafter Ko) in view of Kreller et al. (USPN 6,981,251) (hereinafter Kreller).

2. Referring to claim 1, Multerer discloses a method for establishing a gaming session between a first network device (i.e. computing device 502) that includes an operating system 526 (Figure 14; ¶ 30, 249) and at least a second network device (i.e. remote computing device 548) in a communications network (i.e. LAN/Internet 550,552), the method comprising:

connecting the first network device to the communications network (i.e. sending a request over the network inherently requires connecting to the communications network) (¶ 48); and

establishing a peer-to-peer gaming session with the at least one second network device (i.e. join a game session) (Figure 13; ¶'s 53, 168-169).

Multerer does not explicitly disclose modifying the first network device for the gaming session, the modifying including loading a new operating system. In analogous art, Ko discloses another gaming computer which discloses modifying the device for the gaming session by loading a new operating system (Figure 3, ref. S308; ¶ 17, 33). It would have been obvious to one of ordinary skill in the art to combine the teaching of Ko with Multerer thereby utilizing the optical disk of Ko to load an operating system, such as the one of Multerer 526 and then install game software (Ko: ¶ 44), which can be the gaming software described in Multerer (e.g. abstract), thereby allowing those users of Multerer in order to utilize the gaming software regardless of the type of operating system software or the type of hardware in the device as supported by Ko (¶ 11-12).

Multerer-Ko furthermore discloses booting the computer up in the new operating system (Ko: ¶ 40); detecting a hardware configuration of the first network device (i.e. checks the hardware configuration) (Ko: ¶ 36); generating a configuration file based on the detecting (i.e. generate a hardware list containing these devices) (Ko: ¶ 36), and installing network access software using the configuration file (i.e. Ko discloses installing drivers for each device on the user's computer, since Multerer discloses using a network access device, one of ordinary skill would naturally understand that a network driver would be installed as well) (Multerer: e.g. abstract; Ko: ¶ 36-38).

Multerer-Ko do not expressly disclose compiling and installing peering software using the configuration file. In analogous art, Kreller discloses another software

installation system which discloses in response to receiving a hardware list of components installed, an executable application is compiled and installed on the client device (col. 3, lines 20-31). It would have been obvious to one of ordinary skill in the art to combine the teaching of Kreller with Multerer-Ko, in order to compile and install the peering software of Multerer utilizing the hardware list of Ko, after the operating system of Ko has been installed, thereby avoiding incompatibilities of software applications and installed hardware.

3. Referring to claim 3, Multerer-Ko discloses installing gaming software (Multerer: e.g. abstract; Ko: ¶ 40), However do not disclose using the configuration file to install a particular application. In analogous art, Kreller discloses another software installation system which discloses in response to receiving a hardware list of components installed, an executable application is installed on the hard drive (col. 3, lines 20-31). It would have been obvious to one of ordinary skill in the art to combine the teaching of Kreller with Multerer-Ko, in order to compile and install the peering software of Multerer utilizing the hardware list of Ko, after the operating system of Ko has been installed, thereby avoiding incompatibilities of software applications and installed hardware.

4. Referring to claim 4, Multerer-Ko discloses determining a video capability (i.e. graphic card) and a disk drive of the first network device (Ko: ¶ 36).

5. Referring to claim 5, Multerer-Ko discloses prior to establishing a peer-to-peer gaming session, connecting to a server (i.e. contacting the match making server to find a game host to contact to) (Multerer: ¶ 43-46).

6. Referring to claim 6, Multerer-Ko disclose the invention substantively as described in the claims above. Multerer-Ko does not explicitly state that the server is an IRC server, however IRC servers are well known in the networking art. By this rationale, "Official Notice" is taken that both the concepts and advantages of providing for IRC servers to connect to are well known in the art. It would have been obvious to one of ordinary skill in the art to modify the system of Multerer-Ko to include an IRC server connection in order to allow users to connect to an IRC server in order to communicate via a well known protocol to a server and receive data from the server.

7. Referring to claim 7, Multerer-Ko disclose the invention substantively as described in the claims above. Multerer-Ko further disclose contacting the server via an encrypted communications channel (Multerer: ¶ 247). Multerer-Ko does not explicitly disclose the communication is done using a VPN, however VPN connections are well known in the art for secure communications between endpoints. By this rationale, "Official Notice" is taken that both the concepts and advantages of providing for VPN connections are well known and expected in the art. It would have been obvious to one of ordinary skill in the art to modify the system of Multerer-Ko to include VPN

connections in order to provide an added layer of security between endpoints, which would reduce the likelihood of compromised communications.

8. Referring to claim 8, Multerer-Ko disclose storing information regarding the peer-to-peer gaming session (i.e. store data for various game sessions) (Multerer: ¶ 74).

9. Referring to claim 9, Multerer-Ko disclose the ability to boot the device up in the operating system or the new operating system (i.e. the user selects which operating system to boot the device up, further the user can determine which OS to boot up in by deciding whether the optical disc is inserted in the disc reader) (Ko: e.g. abstract; ¶ 38).

10. Referring to claim 10, Multerer-Ko disclose the invention substantively as described in the claims above. Multerer-Ko do not explicitly disclose removing the operating system after loading the new operating system, however this feature would be well known in the art (i.e. due to incompatibility issues, hard drive space, etc.). By this rationale, "Official Notice" is taken that both the concepts and advantages of removing the old OS after loading the new OS are well known and expected in the art. It would have been obvious to one of ordinary skill in the art to modify the system of Multerer-Ko to remove the old OS after adding the new OS in order to save space when the user will not be using the old OS, such as a new update, or a migration to a different platform, thereby having more hard drive space for other activities, such as storing data.

11. Referring to claim 11, Multerer-Ko disclose the invention substantively as described in the claims above. Multerer-Ko do not explicitly disclose that the second OS is tuned for communications and peer-to-peer gaming, however it is well known that multiple facets of the OS can be adjusted based on the user's needs (i.e. applications to load on boot, thread priorities, overclocking, etc.). By this rationale, "Official Notice" is taken that both the concepts and advantages of providing for tuning the OS for communications and peer-to-peer gaming are well known in the art. It would have been obvious to one of ordinary skill in the art to modify the system of Multerer-Ko to tune the OS for communications and gaming in order to remove unnecessary services not needed for communications and/or gaming, such as word processors, administrative tools, etc, thereby freeing CPU power and memory usage for tasks which are used.

12. Claim 12 is rejected for similar reasons as stated above.

13. Referring to claim 13, Multerer-Ko disclose the OS is an open-source OS (i.e. Linux and UNIX are both open source OS's) (Ko: ¶ 41).

14. Claim 14 is rejected for similar reasons as stated above.

15. Referring to claim 15, Multerer-Ko disclose receiving the gaming package from a DVD (Ko: ¶ 41).

16. Referring to claim 16, Multerer-Ko disclose the invention substantively as described in the claims above. Multerer-Ko do not explicitly disclose the ability to download the gaming package over a network, however downloading games and software over a network is well known to those in the networking art. By this rationale, "Official Notice" is taken that both the concepts and advantages of providing for downloading gaming packages over the Internet are well known and expected in the art. It would have been obvious to one of ordinary skill in the art to modify the system of Multerer-Ko to download the information contained in the optical disk over the network to save the distributor the added cost of burning the optical discs, but rather have one source, and allowing multiple people download this information over the network, thereby reducing cost and increasing availability of the information.

17. Claims 18 and 19 are rejected for similar reasons as stated above.

18. Referring to claim 20, Multerer-Ko discloses the information stored identifies a game being played in the peer-to-peer gaming session (Multerer: ¶ 57-60).

19. Claim 21 is rejected for similar reasons as stated above. Furthermore Multerer discloses connecting to a server to identify possible gaming sessions (i.e. querying the match making server) (¶ 55-60).

20. Referring to claim 22, Multerer-Ko discloses establishing a gaming session in response to a selection to one the identified possible gaming sessions (Multerer: ¶ 56).

21. Claims 23-25 are rejected for similar reasons as stated above.

22. Referring to claim 26, Multerer-Ko disclose the stored information includes information identifying the selected games (i.e. game titles) (Multerer: ¶ 56) and information identifying the users associated with the plurality of network devices (i.e. information held in the presence servers) (Multerer: ¶ 53-56, 244).

23. Referring to claims 27 and 28, Multerer-Ko disclose the invention as described in the claims above. Multerer-Ko do not expressly teach providing advertisements or a fee based service to the plurality of devices, however these features are well known in the art (i.e. internet advertising, subscriptions, etc.). By this rationale, "Official Notice" is taken that both the concepts and advantages of providing for advertisements or fee based services over the Internet are well known and expected in the art. It would have been obvious to one of ordinary skill in the art to modify the system of Multerer-Ko to incorporate advertising or fee based services in order to provide revenue to the providers for said services.

24. Referring to claims 29 and 30, Multerer-Ko disclose the use of geographically distinct servers and a warehouse to house all the geographically distinct servers (i.e. the

Office construes the term "geographically distinct server" as a server which is connected via a network to communicate with other servers, such as the servers 412, 414, 420, 424, communicating via private network 408, which are all encompassed by a warehouse, also which can be construed as the secure data center 410) (Figure 13).

25. Claim 31 is rejected for similar reasons as stated above.

Response to Arguments

26. Applicants arguments have been considered, but are moot in view of the new rejections presented above.

Conclusion

27. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

28. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

29. Applicant has failed to seasonably challenge the Examiner's assertions of well known subject matter in the previous Office action(s) pursuant to the requirements set forth under MPEP §2144.03. A "seasonable challenge" is an explicit demand for evidence set forth by Applicant in the next response. Accordingly, the claim limitations the Examiner considered as "well known" in the previous Office action are now established as admitted prior art of record for the course of the prosecution. See In re Chevenard, 139 F.2d 71, 60 USPQ 239 (CCPA 1943).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph E. Avellino whose telephone number is (571) 272-3905. The examiner can normally be reached on Monday-Friday 7:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey C. Pwu can be reached on (571)272-6798. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Joseph E. Avellino/
Primary Examiner, Art Unit 2146